

Remarks

The Applicant would like to thank the Office for the careful consideration given the present application in the Detailed Action mailed 01/12/2005. With the foregoing amendments and the ensuing remarks, the Applicant has endeavored to respond most properly to each of the points raised by the Office to ensure that the specification and claims now presented are allowable in all respects. With this in mind, the Applicant respectfully requests that the Office review and allow the current specification and claims.

Drawings

In the Detailed Action, the Office objected to the drawings because the reference numbers set forth on line 3 of page 25 were not in original FIG. 10. The Office required that the Applicant submit a replacement drawing correcting the numbering.

In response, the Applicant notes that the referenced text was merely noting that the depicted embodiment could incorporate removable and replaceable coupling means. While the coupling means 23 and 25 were shown in FIG. 10, the coupling means 26 and 28 were not visible in FIG. 10 but had been shown in previously described FIGS. 1 and 2. With that, the Applicant believed that FIG. 10 and the description thereof complied with Office practice and was not objectionable.

However, based on the Office's objection, the Applicant has submitted herewith an amended FIG. 10. New FIG. 10 is identical to the original except that the previously hidden coupling means 23 and 25 and an associated portion of the strap 15 are now

depicted. With this, the Applicant believes that the Office's objection has been met. Accordingly, the Applicant respectfully requests that the Office reconsider and allow the drawings in this regard.

**Allowable Subject Matter**

In the Detailed Action, the Office indicated that claims 7-13 and 16-22 would be allowable if rewritten to stand independently including all limitations of their base claims and any intervening claims. In reliance on the Office's indication, the Applicant has rewritten claims 7 and 16 to stand independently. More particularly, claim 7 has been amended to incorporate the limitations of base claim 1 and intervening claim 6. Claim 16 has been amended to incorporate all limitations of base claim 1. Based on these amendments, the Applicant respectfully submits that each of claims 7 and 16 is in condition for allowance, and their reconsideration and allowance are most respectfully requested.

The Applicant further submits that each of claims 8 through 13 is allowable because it depends from allowable claim 7 and because it adds further patentable limitation thereto. Similarly, claims 17 through 22 are allowable in that each adds further patentable limitation to allowable base claim 16. Additionally, claim 15 has been amended to depend from allowable base claim 7 thereby putting it in condition for allowance. Still further, claims 2 through 4 and 23 through 25 now depend from claim 16 thereby placing those claims in condition for allowance. Accordingly, their reconsideration and allowance are respectfully requested.

Claim Rejections Under 35 USC § 103

The Office rejected claims 1, 14, 15, and 23-25 as being unpatentable under 35 U.S.C. § 103 over U.S. Patent No. 4,699,144 to Sherwood in view of U.S. Patent No. 4,640,287 to Anderson. Claims 2-5 were rejected as being obvious in light of Sherwood and Anderson in combination with U.S. Patent No. 5,634,245 to Rouser et al. Additionally, claim 6 was rejected as being unpatentable over the combination of Sherwood, Anderson, and U.S. Patent No. 3,311,112 to Murray.

As noted previously, the rejections of claims 2-4, 15, and 23-25 have been overcome by Applicant's amending the claims to depend from an allowable base claim. Accordingly, the rejections thereof have been rendered moot. Additionally, claim 1 has been canceled thereby rendering its rejection moot. Remaining for discussion, therefore, are claim 5 and claims 6 and 14, which have been amended to depend from claim 5.

It is well settled a proper obviousness analysis requires that one consider the entire claim as a whole and one must compare the claimed invention to the disclosures of the prior art. When references are sought to be combined or modified, "[t]here must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination [or modification]. The knowledge cannot come from the applicant's invention itself." *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Due weight must be given to secondary considerations, such as the existence of a recognized and long-felt need. See, e.g., *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). Still further, portions of

the prior art arguing against, discouraging, or teaching away from the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986).

In the present case, the Applicant most respectfully submits that amended, newly independent claim 5 is neither taught nor suggested by even the combined prior art since claim 5 includes a plurality of limitations that would not have been obvious to a person of ordinary skill in the relevant field at the time of the invention. It will be noted that no prior art reference depicts Applicant's claimed front-closure fastening arrangement with first and second jaw panels coupled to an inboard side of a first brassiere cup and with a tongue panel coupled to an inboard side of a second brassiere cup. While Rouser et al. discloses a structure with first and second jaw panels and a tongue panel for being received therebetween, it cannot fairly be considered to teach one skilled in the art to apply such a structure as particularly claimed by the Applicant as a front closure on a prosthetic brassiere. Furthermore, Anderson, which is not directed to a prosthetic brassiere, makes exceedingly brief reference to the possibility of a front closure arrangement. As such, it cannot in fairness be said to teach or suggest employing Applicant's claimed tongue and jaw panel arrangement in relation to a prosthetic brassiere.

There is simply no suggestion that would motivate one skilled in the art to make the proposed combination of Sherwood plus Anderson plus Rouser to approximate the claimed invention. It will be appreciated that a prosthetic brassiere—arguably more so than a traditional brassiere—must provide full coverage and privacy to the wearer. In

this regard, the Applicant notes that no brassiere, particularly no prosthetic brassiere, has been cited that shows any front closure hook and loop arrangement let alone Applicant's particularly claimed front closure tongue and jaw arrangement. The prior art could more reasonably be said to teach away from providing any hook and loop type front closure on a prosthetic brassiere. Indeed, Sherwood, the only prosthetic brassiere cited in relation to claim 5, speaks only to a rear closure arrangement and never mentions or alludes to a front closure arrangement.

Therefore, the Applicant submits that one skilled in the art would not find the claimed front closure, tongue and jaw, hook and loop fastening arrangement claimed in amended claim 5 obvious. With this in mind, the Applicant respectfully requests that the Office reconsider and allow amended claim 5.

Claims 6 and 14, which depend from claim 5, are patentable for all of the reasons that amended claim 5 is patentable and because they add further patentable limitation thereto. Claim 6 additionally requires first and second shoulder straps and means for rendering the first and second ends of the same removable and replaceable. No such arrangement has been taught or suggested by the prior art for use in relation to a prosthetic brassiere as required by claim 6. Again, the prior art would most fairly be said to teach away from such an arrangement in that prior art prosthetic brassiere disclosures would discourage the use of replaceable straps to prevent inadvertent exposure of the wearer.

Finally, amended claim 14 additionally requires that the first brassiere cup have an open inner volume for receiving a natural breast of a wearer, that the second

brassiere cup have a means for retaining a prosthetic breast, and that a volume of padding be provided on both cups of the brassiere to ensure a symmetrical appearance during use. As such, claim 14 patentably defines over Sherwood since the padding (14) in Sherwood is a "breast simulating pad." Under the teaching of Sherwood, such a "breast simulating pad" would necessarily *not* be included in relation to a brassiere cup designed to receive a natural breast of a wearer. Accordingly, the Applicant submits that amended claim 14 further patentably defines over the cited references.

### Conclusion

In light of the above, the Applicant respectfully submits that all presently pending claims are directed to patentably nonobvious invention. With this in mind, the Office's reconsideration and allowance of the specification and claims are respectfully requested.

The Applicant believes that all issues raised in the Detailed Action have been responded to fully. However, if, after consideration of the above amendments and comments, there remain any open issues in this application that possibly can be resolved by a telephone interview, then the Applicant's undersigned attorney most respectfully requests that he be called to discuss and attempt to resolve those issues.

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Date

Respectfully submitted,

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